Re TAN HONG DECD.

[O. C. J. (Suffian J.) June 23, 1962]

[K.L. — Originating Summons No. 129 of 1961]

Will — Construction — Meaning of "child" and "children" — Whether extended to adopted child or children — Intention of testator — Extrinsic evidence.

By clauses 7 and 13 of his will the testator directed that his property be distributed to named beneficiaries. By clauses 8 and 14 the child or children of any beneficiary named in clauses 7 and 13 respectively would be entitled to take his or her share in the event of the beneficiary dying within twelve years from the date of the testator's death. The question raised in this Originating Summons was whether the words "child" and "children" in clauses 8 and 14 of the will extended to adopted child or children.

Held: whilst in clauses 7 and 13 the testator had manifested a clear intention to benefit two of his adopted sons and five of his adopted grandsons by naming them, there was nothing in the context of the subsequent clauses 8 and 14 to indicate a clear intention to benefit also the adopted children of the named beneficiaries.

Cases referred to:—

(1) *Hodgson* v. *De Beauchasne* 12 Moo. P.C. 286, 235, 329.

(2) *Doucet* v. *Geoghegan* (1878) 9 Ch. D. 441 at p. 455.

(3) *In re Fletcher* [1949] 1 Ch. 473.

(4) *Hill* v. *Crook* L.J. (1873) 42 L.J. (N.S.) 702, 714.

(5) *Whitmore* v. *Lord Craven* 2 Ch. Ca. 167, 169.

(6) *Khoo Hooi Leong* v. *Khoo Hean Kwee* [1926] A.C. 529.

(7) *Higgins* v. *Dawson* [1902] A.C. 1, at p. 11.

(8) *Tan Phee Teck* v. *Tan Tiang Hee* [1952] M.L.J. 240.

(9) *In re The Estate of Lam Chee Tong, decd.* [1949] M.L.J. 1.

(10) *Quaik Kee Hock* v. *Wee Geok Neo* 4 Ky. 128.

(11) *In re Tan Cheng Siong, decd.*, [1937] M.L.J. 87.

(12) *Cheok Chin Huat & Ors.* v. *Cheok Chin Soo & Ors.*, [1937] M.L.J. 157.

(13) *British Malaya Trustee & Executor Co. Ltd. & Anor.* v. *Chan Mek Tuan & Ors.* [1937] M.L.J. 233.

ORIGINATING SUMMONS.

Ng Ek Teong for the applicant.

D. G. Ironside for respondents Nos. 1, 3, 4, 5, 6, 7 and 9.

Robert S. A. Hsieh for respondent No. 2.

Cur. Adv. Vult.

Suffian J.: On 4th November, 1938, Tan Hong, a Chinese resident in Singapore, made in Singapore a will and he died in Singapore on 13th November, 1938.

By clauses 7 and 13 of the will the testator directed that his property be distributed to named beneficiaries, one of them being "my son Tan Jin Khai". By clauses 8 and 14 the children of any beneficiary named in clauses 7 and 13 respectively are entitled to stand in his or her place and to take his or her shares in the event of the beneficiary dying within a period of twelve years from the date of the death of the testator.

The exact words of the four clauses are as follows:—

"7. I DECLARE that during the said period in which my Trustees are carrying on my said business my Trustees shall stand possessed of the annual nett profits of the said business UPON TRUST to divide the same into thirteen (13) equal shares and to pay:—

Three thirteenth shares to my son TAN JIN LUAN (also called Tan Seng Kok);

Two thirteenth shares to my son TAN JIN KHENG (also called Tan Chin Kah);

One thirteenth share to my son TAN JIN KHAI (also called Tan Seng Thai);

One thirteenth share to my son TAN JIN TIAK (also called Tan Chin Phan);

One thirteenth share to my daughter TAN JIN SET;

One thirteenth share to my grandson TAN GHEE CHONG (also called Tan Thay Choo);

One thirteenth share to my grandsons TAN GHEE CHOH and TAN GHEE SAI in equal shares;

One thirteenth share to my grandsons TAN GHEE LIAM and TAN GHEE POEY in equal shares;

Two thirteenth shares to my sons TAN JIN LUAN and TAN JIN KHENG and I declare it to be my express wish and desire but without imposing any Trust or legal obligation upon them that they shall expend this legacy in the upkeep and maintenance of the family house situate in Eng Choon District, Hokkien Province, China.

8. IF ANY of the persons to whom a share of the nett profits of my said business is given by the last preceding clause shall die in my lifetime or shall die during the said period in which my Trustees are carrying on my said business then her or his share whether original or accrued shall during the said period or during the remainder of the said period (as the case may be) be paid to all or any her or his *children* or *child* if more than one in equal shares and if none shall be paid equally to the persons for the time being and from time to time entitled to the share of nett profits under the provisions of this and the last preceding clause.

* * *

13. I BEQUEATH all the rest and residue of my estate movable and immovable whatsoever and wheresoever situate unto my Trustees UPON TRUST that my Trustees shall sell call in collect and convert into money the same at such time or times and in such manner as they shall think fit with power to postpone the sale calling in and conversion of the whole or any part or parts of the said property including lease-holds or other property of a terminable hazardous or wasting nature during such period not exceeding a period of twelve (12) years from the date of my death as they shall think proper and to retain any investments existing at my death without being responsible for loss and shall invest the moneys to arise from such sale and conversion and any moneys forming part of my residuary estate and shall stand possessed thereof UPON TRUST during the said period of twelve (12) years to pay the income arising from my residuary estate to such persons as shall for the time being be entitled to receive the profits of my said business or the income of the investments representing the proceeds of sale and disposal thereof under the provisions in that behalf hereinbefore in Clauses 7, 8 and 11 hereof contained in the same shares and proportions as such persons shall for the time being be entitled to receive the said profits or the income arising from the said investments AND UPON TRUST at the expiration of the said period to sell and convert into money all my residuary estate and to stand possessed of the moneys to arise from such sale and conversion UPON TRUST to divide the same into thirteen (13) equal shares and to pay:—

Three thirteenth shares to my son TAN JIN LUAN (also called Tan Seng Kok) absolutely;

Two thirteenth shares to my son TAN JIN KHENG (also called Tan Chin Kah) absolutely;

One thirteenth share to my son TAN JIN KHAI (also called Tan Seng Thai) absolutely;

One thirteenth share to my son TAN JIN TIAK (also called Tan Chin Phan) absolutely;

One thirteenth share to my daughter TAN JIN SET absolutely;

One thirteenth share to my grandson TAN GHEE CHONG (also called Tan Thay Choo) absolutely;

One thirteenth share to my grandsons TAN GHEE CHOH and TAN GHEE SAI absolutely in equal shares;

One thirteenth share to my grandsons TAN GHEE LIAM and TAN GHEE POEY absolutely in equal shares;

Two thirteenth shares to my sons the said TAN JIN LUAN and TAN JIN KHENG absolutely and I declare it to be my express wish and desire but without imposing any trust or legal obligation on them that they shall expend this legacy in the upkeep and maintenance of the family house situate in Eng Choon District, Hokkien Province, China.

14. I DECLARE that if any of the persons in the last preceding clause named or referred to shall predecease me or die before the expiry of the said period of twelve (12) years from the date of my death then the share or shares of such deceased person or persons original and accrued shall be paid to the *children* living at the expiry of the said period of such deceased person or persons if more than one in equal shares or in any case where there shall be no such *child* then such share or shares original and accrued shall be divided equally *per stirpes* amongst the surviving beneficiaries named in the last preceding clause and the *children* of any deceased beneficiary entitled to stand in his or her place BUT so nevertheless that this clause shall operate by way of direct gift to the *children* of any such person or persons so dying as aforesaid or to the surviving beneficiaries named in the last preceding clause or the *children* of any deceased beneficiary entitled as aforesaid and shall not make any such share part of the estate of such person or persons so dying as aforesaid so as to be liable for debts or estate or other duty."

During the said period of twelve years which expired on 12th November, 1950, the beneficiary, Tan Jin Khai, died on 2nd January, 1944. Before the testator's death, the testator had adopted for Tan Jin Khai two sons, respondents Nos. 2 and 3, and Tan Jin Khai had himself adopted three more, respondents Nos. 1, 6 and 7, and after the testator's death Tan Jin Khai adopted two more, respondents Nos. 4 and 5. In his will dated 24th December, 1943, Tan Jin Khai referred to his seven adopted children whom he named, simply as his children.

Tan Jin Luan, another son, also a beneficiary, is the sole surviving executor and trustee of the testator's estate. He asks me to construe clauses 8 and 14 of the testator's will and to answer the following questions:—

(a) whether the words "child" and "children" in clauses 8 and 14 of the will of Tan Hong mean only the natural issue of the beneficiary or beneficiaries named in clauses 7 and 13 respectively or whether they include an "adopted" child or children;

(b) if the answer to question (a) is that the words "child" and "children" include an "adopted" child or children, then whether adoption in fact as against an adoption in accordance with the provisions of the Adoption of Children Ordinance No. 36 of 1939 (S.S. Cap. 36) is sufficient for such inclusion.

I am also asked to make a declaration as to the nature and extent of the rights of the seven adopted children of Tan Jin Khai and to issue directions as to the manner in which the share given to Tan Jin Khai under the testator's will should be dealt with.

Tan Jin Khai's seven adopted children are the first seven respondents in this case. Inche' Ng Ek Teong for the applicant contends that "child" and "children" in clauses 8 and 14 of the testator's will only mean natural born issue, while Inche' Ironside for respondents Nos. 1, 3, 4, 5, 6 and 7 (he also appears for respondent No. 9, the Official Assignee, Singapore) and Inche' Hsieh for respondent No. 2, both contend that the words include "adopted" child and children.

I find for a fact that adoption was in fact widely practised within the testator's family In clauses 7 and 13 he referred to Tan Jin Kheng and Tan Jin Tiak in each case as "my son", when in fact both of them were adopted by him for his third wife. The testator had two other adopted children, Tan Tian Bee and Tan Jin Piah who predeceased him. The testator's adopted son, Tan Tian Bee, had adopted two children, one of whom, Tan Ghee Chong, is referred to as "my grandson" in clauses 7 and 13. After the death of Tan Jin Piah the testator adopted two children to be brought up by Tan Jin Piah's widow as Tan Jin Piah's sons. They were Tan Ghee Choh and Tan Ghee Sai. They are referred to in the testator's will in clauses 7 and 13 as "my grandsons". A son, Tan Jin Tiak, died at the age of 15. Many years later the testator adopted two children as the children of Tan Jin Tiak, namely, Tan Ghee Poey and Tan Ghee Liam. Both these adopted grandsons are referred to in clauses 7 and 13 of the will as "my grandsons".

As regards Tan Jin Khai's seven adopted children, none of them was referred to in the testator's will by name, but as regards two of them, on 17th September, 1929, Tan Hong made a statutory declaration swearing to Tan Ghee Kheng's place and date of birth and in that declaration he described him as "my grandson" and on 21st October, 1925, he made another statutory declaration swearing to Tan Ghee Kow's place and date of birth and in that declaration he described him as "my grandson".

It was argued on behalf of these seven adopted children of Tan Jin Khai's that the testator himself made no distinction between on the one hand natural born children and grandchildren and on the other hand adopted children and grandchildren and therefore it was clear that he intended the word "child" to extend to "adopted" child. Particularly was this so in the case of Tan Jin Khai who never had any natural born child. Tan Jin Khai for some years before his death was in a bad state of health and could not have sexual intercourse with any of his three wives. Even in his lifetime the testator himself had made provisions for an heir for Tan Jin Khai by adopting for him respondents Nos. 2 and 3, the testator was living in the same house as Tan Jin Khai's second wife and knew all the circumstances of Tan Jin Khai's family. Were the will to be construed as excluding adopted children, none of them would take.

Two of Tan Jin Khai's adopted children had not been conceived at the date of Tan Hong's

will. Were they illegitimate children of Tan Jin Khai, clearly they could not benefit from Tan Hong's will, because it is contrary to public policy to benefit the fruits of later illicit intercourse, but (it was argued) the same consideration cannot apply to adopted children not conceived at the date of the will.

I have given anxious consideration to this matter and have come to the following conclusions.

First, I decide that at the time of his death on 13th November, 1938, Tan Hong had acquired a domicile of choice in Singapore and there is no evidence that he ever abandoned it in favour of his domicile of origin in China. He first came from China in 1878 when he was 16. First he went to Singapore and two years later he moved to Kuala Kubu where he established his business Chop Ban Joo. In 1914 he moved to Singapore where he established the business known as Ban Hock Hin at Cecil Street, without winding up the other business which was later registered as a company in Kuala Lumpur. It is true that he had some property in China and had expressed a desire to die or be buried in China. Indeed he had a tomb made there in his native village for him and in his will, clause 2, he directed that after his death his remains should be sent to China. But as against this, he also had a tomb built for him and his wife in Singapore ten years before his death, and in the event he was buried in it. At the time of his death it was difficult to travel to China because of war conditions there and it was for this reason that his remains after having been kept for five months were interred in Singapore. He had returned to China only once. He had made his fortune in this country. By his will he directed that the family business should carry on for twelve years after his death and he did not direct that any of his wives and children should return to China. By clause 15 he directed that his estate should invest in this country and it is clear that he intended that his wives, children and grandchildren should take root in this country where he had himself acquired substantial property. In the face of these acts, any declaration made by him as to his intention to retire to China may be given but little weight, for as stated by Dr. Lushington in 1858 in the Privy Council case of *Hodgson* v. *De Beauchasne*[1]—

> " With respect to verbal declarations made by witnesses who depose thereto, no doubt such declarations are admissible evidence in these questions of domicile; but the weight to be attributed to them entirely depends on circumstances, especially the time which has elapsed since they were made; and the circumstances under which they were made. To entitle such declarations to any weight, the Court must be satisfied not only of the veracity of the witnesses who depose to such declaration, but of the accuracy of their memory, and that the declarations contain a real expression of the intentions of the deceased. Such evidence, though admissible, has been considered by many authorities as the lowest species of evidence, especially when, as in this case, encountered by conflicting declarations . . .
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> We think that length of residence, according to its time and circumstances, raises the presumption of intention to acquire domicile. The residence may be such, so long and so continuous, as to raise a presumption, nearly, if not quite, amounting to a *praesumptio juris et de jure;* a presumption not to be rebutted by declarations of intention, or otherwise than by actual removal.",

and in 1878 by Jessel M.R. in *Doucet* v. *Geoghegan*[2]—

> ". . . . it would be dangerous to admit declarations in casual conversations, even if uncontradicted, to outweigh all the acts of a man's life and every document executed by him."

Secondly, I decide that this will should be construed in accordance with the law in England. Whether this will is to be construed according to the law in Singapore where it was made or according to the law in the Federation where this Court sits, is not of practical importance, because the law in the two territories is identical. In Singapore section 101 of the Evidence Ordinance reads—

> " [Wills] shall be construed according to the rules of construction which would be applicable thereto if they were being construed in a Court of Justice in England."

In the Federation there exists the Wills Ordinance No. 38 of 1959 and according to section 13(3) thereof, section 100 of Evidence Ordinance No. 11 of 1950 applies, the relevant part of which is in identical terms with the above-quoted Singapore provision.

What is the law in England? There adoption as a status is a recent phenomenon and many of the cases on the succession of non-natural children under a will such as this involve illegitimate children, but in *In re Fletcher*[3] it was held that in this respect the rights of adopted children are to be equated with those of illegitimate children, both being non-natural issue. In *Hill* v. *Crook*,[4] a House of Lords case, Lord Cairns stated the general rule as follows:—

> ". . . . . and what appears to me to be the principle which may fairly be extracted from the cases upon this subject is this — the term 'children' in a will *prima facie* means legitimate children, and if there is nothing more in the will, the circumstance that the person whose children are referred to has illegitimate children, will not entitle those illegitimate children to take."

He then gave two exceptions to the general rule—

> " But there are two classes of cases in which that *prima facie* interpretation is departed from. One class of cases is, where it is impossible from the circumstances of the parties that any legitimate children could take under the bequest. A familiar example of that might be given in this way. Suppose there is a bequest 'to the children of my daughter, Jane', Jane being dead and having left illegitimate children, but having no legitimate children, there, inasmuch as the testator must be taken to have known the state of his family and must be taken to have intended to benefit some children of his daughter, Jane, and inasmuch as she had no children who could be benefited except illegitimate children, rather than that that bequest should fail altogether, the Court will hold that those illegitimate children are intended and they will take under the term 'children'.
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> .....
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> The other class of cases is of this kind, where there is upon the face of the will itself, and upon a just and proper construction and interpretation of the words used in it, an expression of the intention of the testator to use the term 'children', not merely according to its *prima*

facie meaning of legitimate children, but according to a meaning which will apply to and which will include illegitimate children. I might give again a familiar expression of that class of cases by a supposition of a bequest, upon which I presume there will be no arguments. Suppose that a testator were to say in his will — 'Being aware that my daughter, who is now married to her husband, had before her marriage children by the same person, who in law are illegitimate children, and it being my intention to provide for all the children of my daughter, I give funds the proceeds upon trust for her life and after her death to divide among the children of my said daughter.' I apprehend that no person reading a bequest of this kind, could hesitate to say that the testator had shown upon the face of his will by the words which he had used, his intention in a way that could not be mistaken to use the generic term 'children', so as to include illegitimate children along with legitimate children."

Here it was argued for the adopted children of Tan Jin Khai that as the testator Tan Hong knew the full circumstances of Tan Jin Khai's family and indeed had himself adopted two sons for Tan Jin Khai and as Tan Jin Khai left only adopted children and no natural born issue, to construe the word "children" in Tan Hong's will so as to exclude adopted children would have the effect of making the bequest fail altogether as there are no natural born children who qualify, and therefore these adopted children come within the first class of exceptions to the general rule given by Lord Cairns. I am unable to accept this argument (and this is my third conclusion), because I agree with Inche' Ng Ek Teong's submission that the reference to children in Tan Hong's will must not be construed in relation to Tan Jin Khai alone, it must be construed in relation to all the beneficiaries named in clauses 7 and 13. Words occurring more than once in a will must be presumed to be used always in the same sense, *Whitmore* v. *Lord Craven*,[5] and the words "child" and "children" in this will must be given the same meaning whether in relation to a beneficiary with natural children only, or with adopted children only or with both natural and adopted children. While it is true that Tan Jin Khai left only adopted children, it does not necessarily follow that the other beneficiaries named by Tan Hong in clauses 7 and 13 (there were ten of them) also left only adopted children. For instance Tan Jin Luan the applicant had, on the testator's death, two natural sons, an adopted son and four natural daughters; Tan Jin Tiak several natural, but no, adopted children; likewise Tan Jin Kheng; Tan Jin Set a natural daughter and an adopted son.

Consequently Tan Jin Khai's adopted children could benefit if at all only under the second exception to the general rule stated by Lord Cairns. Here, is there upon the face of the will itself, and upon a just and proper construction and interpretation of the words used in it, an expression of the intention of the testator, Tan Hong, to use the term "children", not merely according to its *prima facie* meaning of natural born children, but according to a meaning which will apply to and which will include adopted children? In considering this question, on the authority of the Privy Council case of *Khoo Hooi Leong and Khoo Hean Kwee*[6] I must totally disregard the two statutory declarations made by Tan Hong in which he described two of Tan Jin Khai's adopted sons in each case simply as "my grandson", the treatment by Tan Hong and Tan Jin Khai of these adopted children as natural born children and Tan Jin Khai's will in which he himself described his seven adopted children simply as "sons" and "daughters", for as stated by Lord Phillimore at page 538, 539 —

"It is right in construing . . . [a] will that the Court should put itself into the position of . . . . the testator and construe his language according to his knowledge. But this does not mean that the Court is to look anywhere for the intentions of a [testator] except to the terms of the document itself. In these matters . . . the Court must be on its guard against letting any extrinsic evidence of what the [testator] intended under the guise of evidence as to the circumstances existing when he made the [will] . . . . any evidence dehors the instrument to show that the [testator] must have meant to use ordinary words of the English language other than in their usual meaning, cannot be admitted."

Looking at Tan Hong's will and not over and beyond its four walls, it is quite clear that he intended to benefit two of his adopted sons and five of his adopted grandsons, but he was careful to mention them by names in clauses 7 and 13. But when one looks at clauses 8 and 14 under which he directed that the children of any beneficiary named in clauses 7 and 13 respectively were entitled to stand in his or her place and to take his or her share in the event of him or her dying within a period of twelve years from the date of the death of the testator, there is nothing on the face of the will to indicate (and this is my fourth conclusion) that he intended to use the term "child" or "children", not merely according to its *prima facie* meaning of natural born children, but according to a meaning which will apply to and which will include adopted children. The example given in the above extract from Lord Cairn's speech clearly showed from its context that illegitimate children were meant to benefit, but looking at Tan Hong's will, I cannot find the same clear intention manifested by him to benefit adopted children of named beneficiaries. My so holding may, in view of the love and affection obviously shown by Tan Hong to his adopted children and adopted grandchildren during his lifetime, probably make him turn in his grave, but, as stated by Lord Davey in *Higgins* v. *Dawson*,[7] a House of Lords case —

"It may be that the testator may have been imperfectly acquainted with the use of legal language; . . . and he may have used language the legal interpretation of which does not carry out the intentions that he had in his mind. I do not know whether that is so or not, but, whether that be so or not, of this I am quite clear that that fact should not induce the Court to put a meaning on his words different from that which the Court judicially determines to be the meaning which they bear."

Here, it is conceivable that if Tan Hong had been asked by his solicitor whether he wished to benefit the adopted children of his named beneficiaries, probably he would have answered yes, but the question was probably never put to him

and I am only left with bare words of the will to construe. From the case of *Tan Phee Teck* v. *Tan Tiang Hee*[8] decided by the Singapore Court of Appeal, it is quite clear that a will must be construed strictly. There the words in issue were "as to the remaining third thereof in trust for all the children (including those whom he may adopt) of my nephew, Tan Kek Tiang" and it was clear that an adopted son was intended to benefit, but the question arose whether an adopted son of Tan Kek Tiang who had been adopted not by him personally but by his father, Tan Kim Quan, on his behalf was intended to benefit and it was held that he could not benefit under the will, as "the act of adoption, if it is to be effective under the will, must be made personally by Tan Kek Tiang" (*per* Mathew C.J. (F.M.)).

When Tan Jin Khai was 16 he married his first wife, probably in the year 1912. Because he had no children, his father Tan Hong adopted for him two sons, respondents No. 2 and No. 3. In 1921 he took on a second wife. Again he had no issue and about thirteen months before Tan Hong died, respondent No. 7, a girl, was adopted and a month before Tan Hong died, respondent No. 6 was adopted. In 1929 Tan Jin Khai married yet a third wife, by whom again he had no issue and he and this wife adopted three children, namely, respondents Nos. 1, 4 and 5. When he died on 2nd January, 1944, he was 48 or 49 and knowing the importance attached by the Chinese particularly of his class to having children, especially sons, I find for a fact that Tan Jin Khai was probably incapable of producing any children. It was urged on behalf of his adopted children that because of this and because Tan Hong knew about this, the will must be construed as intended to benefit them. Inche' Ng Ek Teong cited the case of *In re The Estate of Lam Chee Tong (deceased)*[9] to the contrary. There the deceased was 57 when he died and his wife 42 and it was held by Carey, J., that though the cause of his death was advanced tuberculosis of the lungs from which he had suffered for three years, and he had been married for twenty years without issue, yet "one cannot exclude the possibility of a child being born to them being in the contemplation of the testator when he made his will" and therefore the word "child (or children)" cannot be extended to include "adopted" children. Consequently his two adopted children who lived with him in Perlis (he left no natural issue) could not take. I prefer to base my judgment on the grounds already stated, because in *Lam Chee Tong's* case the children of Lam Chee Tong only need be considered, whereas, as already stated, here the children not only of Tan Jin Khai but also those of nine other named beneficiaries have to be taken into account and also I venture to say with respect that if I had to construe Lam Chee Tong's will today I would, as at present advised, probably decide differently from Carey, J.

In a very old case decided by the Singapore Court of Appeal in 1886, *Quaik Kee Hock* v. *Wee Geok Neo*,[10] the testator devised certain properties to his "wives or widows and children both in Singapore and in China". At the date of the will and at the time of his death he had two wives, one in Singapore and one in China, a daughter of his own in Singapore, and adopted son in Singapore and two adopted sons in China and it was held that the word "children" included the adopted son in Singapore and both the adopted sons in China. But there was also a direction in the same will to make "a remittance of one-fourth of the residue to the wife or widow and son in China". The context clearly showed the testator's intention to benefit adopted children also. The context of Tan Hong's will did not in my view show any such intention.

In *re Tan Cheng Siong (deceased)*[11] the testator after making various bequests directed his trustees to receive the dividend and income derived from certain shares and "thereout to pay yearly to the said Tan Chain Lee [one of the trustees] the sum of one thousand dollars ($1,000) for the maintenance of the children of my paternal uncles in China and to divide the balance thereof into four equal parts and to pay one part to my son Tan Swee Hong, one part to my son Tan Seng Hwee and two parts to my adopted son Tan Chin Tuan". It was held by McElwaine C.J. (Singapore) that "paternal uncles in China" refers to the natural and lawful brothers of the father of the testator residing in China and "children of my paternal uncle in China" refers to the natural and lawful children of such paternal uncles. McElwaine C.J. said at p. 90 :

> " The very clause the subject of this summons speaks of children and sons and concludes with the words 'my adopted son Tan Chin Tuan'. Clearly the testator distinguished between 'sons' and adopted sons . . . "

Here the testator Tan Hong in clauses 7 and 13 named, among others, certain beneficiaries who were in fact adopted sons and grandsons and described them simply as sons and grandsons, but in subsequent clauses 8 and 14 he used the generic term "child" or "children" and in my view there is nothing in the context to show that he intended to extend their primary meaning to include adopted children.

In another Singapore case, *Cheok Chin Huat & Ors.* v. *Cheok Chin Soo & Ors.*,[12] a testatrix by her will devised to her trustees a house upon trust to permit the same to be used as a family house by certain named beneficiaries "and their families" for a period of twenty-one years from the date of her death and it was held that there was nothing in the context of the will which justified extending the primary meaning of "family" to adopted children. Howes Ag. C.J. said at page 159 :

> "I can find nothing in the context of the will to entitle me to hold that it was the intention of the testatrix to include adopted children under the word 'families'. On the contrary, where an adopted child is mentioned, he is either so described; e.g., in appointing

Cheok Chin Soon as trustee, she described him as 'the adopted son of my said husband' or, as in clause 7, she specifically mentioned him by name."

Here in clauses 7 and 13 Tan Hong named certain adopted sons and grandsons but he described them simply as sons and grandsons and it is clear that he intended to benefit them, but in my view there is nothing in the context of the subsequent clauses 8 and 14 to indicate a clear intention on his part to benefit also the adopted children of the named beneficiaries.

In yet another Singapore case, *British Malaya Trustee & Executor Co. Ltd. & Anor.*, v. *Chan Mek Tuan & Two Ors.*,[13] it was held that "child" in clause 2 of the will in dispute included adopted children, but as Terrell Ag. C.J. there said at page 233 :

"The testator had only one natural child, his daughter Lim Chye Inn. His three sons were all adopted. As however he speaks of his adopted sons as 'sons' throughout the will, and as the expression 'last surviving child' in clause 2 necessarily implies that the testator considered he had more than one child, I think it follows that the expression 'child' includes his adopted sons."

Unlike that of Tan Hong's will, the context of this will clearly indicated an intention to benefit adopted children.

To sum up, my answer to question (a) is that the words "child" and "children" in clauses 8 and 14 of the will of Tan Hong mean only the natural issue of the beneficiary or beneficiaries named in clauses 7 and 13 respectively. In view of this, question (b) does not arise. The seven adopted children of Tan Jin Khai do not benefit under the will. The share given to Tan Jin Khai under clause 7 of the will should be paid equally to the persons entitled to the share of nett profits under clauses 7 and 8. The share given to him under clause 13 should be divided equally per stirpes amongst the surviving beneficiaries named in clause 13 and the children of any deceased beneficiary entitled to stand in his or her place.

Costs of the parties as between solicitor and client on the higher scale shall be paid out of the assets of the estate.

Order accordingly.

Solicitors: *Braddell & Ramani; D. G. Ironside; Boswell, Hsieh & Lim.*

CHINNAKARAPPAN v. PUBLIC PROSECUTOR

[C.A. (Hill and Good JJ.A., and Ong J.) July 25, 1962]

[K.L. — F.M. Criminal Appeal No. 23 of 1962]

Criminal Law and Procedure — Police report — Omission of accused's name in police report made by witness — Secondary evidence.

The omission of the accused's name in the police report made by a witness does not in any way detract from the weight and value which the trial Judge had attached to the testimony of the complainant himself. The witness' evidence as to the identity of the complainant's assailant was at any rate only secondary, and the law does not in this case (on a charge under section 326, Penal Code) require independent corroboration of the complainant.

COURT OF APPEAL (CRIMINAL).

Dr. Seenivasagam (*R. Murugason* with him) for the appellant.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for the respondent.

Hill Ag. C.J. (delivering oral judgment): On the 22nd January this year at about 4 p.m. the complainant Kottilan was cycling along a track off Jalan Scudai, Johore Bahru, when he was attacked with a parang and seriously wounded. He managed to run a short distance, but was pushed by his assailant into a drain where he was again slashed repeatedly with the parang. All this happened in broad daylight and Kottilan had abundant opportunity to see his assailant. He told the trial Judge that his assailant was Chinnakarappan, the appellant. The trial Judge unhesitatingly believed him.

Adams J. considered and examined the defence very carefully and came to the conclusion that the evidence of the defence was neither true, nor might it be said, in the light of all the evidence, that it was reasonably likely to be true even though he did not believe it. He therefore convicted the appellant of the offence of voluntarily causing grievous hurt contrary to section 326 of the Penal Code.

We are of opinion that the omission of the appellant's name in the police report made by Ramasamy (P.W.3) does not in any way detract from the weight and value which the learned trial Judge had attached to the testimony of Kottilan himself. Ramasamy's evidence as to the identity of Kottilan's assailant was at any rate only secondary, and the law does not in this case require independent corroboration of Kottilan. The appellant's arrest followed swiftly after Ramasamy's report. To us, it appears incredible, as it did to the trial Judge, that Kottilan, having seen his assailant who had wounded him so grievously, would readily allow his true assailant to go scot-free for the purpose of framing the appellant.

We can see no grounds for interfering with this conviction and the appeal against it is dismissed.

There is no appeal against sentence, but this was a most brutal and violent assault, one which was very nearly murder, and we consider that a sentence of ten years' imprisonment should be imposed.

We propose therefore to act under section 29 sub-section (2) of the Courts Ordinance, No. 43 of 1948, and quash the sentence passed by the trial court and pass in substitution therefor a sentence of ten years' imprisonment.

Appeal against conviction dismissed. Sentence enhanced.

Solicitors: *Murugason & Co.*